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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 15, 1993

Mr. William F. Caton
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 93-107
Channel 280A
Westerville, Ohio

Dear Mr. Caton:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and six (6) copies of its "Motion to Enlarge Issues Against Davis."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 
John W. Hunter

By: 
Stephen T. Yelverton

Enclosure

B: CATON. 106

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SEP 15 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of:

DAVID A. RINGER

et al.,

Applications for Construction
Permit for a New FM Station,
Channel 280A, Westerville,
Ohio

MM Docket No. 93-107

File Nos. BPH-911230MA

through

BPH-911231MB

To: Administrative Law Judge
Walter C. Miller

MOTION TO ENLARGE ISSUES AGAINST DAVIS

Respectfully submitted,

MCHAIR & SANFORD, P.A.

By: _____
John W. Hunter

By: _____
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September 15, 1993

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MOTION TO ENLARGE ISSUES AGAINST DAVIS

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 1.229 (b)(1) of the Commission's Rules, hereby submits this motion to enlarge the issues against Shellee F. Davis ("Davis"). The motion is based on the August 31, 1993, hearing testimony of Davis and is filed within fifteen (15) days of the hearing. Thus, it is timely filed. In support of its motion to enlarge the issues, ORA submits the following comments.

In her hearing exhibit, Davis submitted numerous newspaper and magazine articles about her current business, Britt Business Systems, Inc. ("BBS"), and about her business accomplishments (Davis Ex. 1, attachments A-J). Therein, Davis represented that Ben Davis, her brother-in-law, was a partner with her in BBS in 1991 and that he was General Manager and Vice President (Davis Ex. 1, attachments B and E). When confronted at the hearing with these representations, Davis admitted that they were not true and that she had knowingly given the news reporter false information (Tr. 439-444).

Based upon Davis' admissions at the hearing, a substantial and material question of fact is therefore raised as to whether she made knowing and intentional misrepresentations in her hearing exhibit as to her business interests. See, Richardson Broadcast Group, 7 FCC Rcd 1583, 1585, para. 9 (1992), applicant disqualified based upon admissions that she had made false statements.

Although the false representations in Davis' hearing exhibit may not be of decisional significance, the fact that a misrepresentation was made is more important than the facts misrepresented. FCC v. WOKO, Inc., 329 U.S. 223, 227 (1946), even useless and immaterial misrepresentations are disqualifying.

A substantial and material question of fact is moreover raised as to whether Davis' hearing testimony, that she had always been the 100% owner of BBS and that Ben Davis had only been an employee at some time in the past, is actually true (Tr. 376, 388, 424, 426, 431, 433, 437-438). Caught between the conflict in her hearing testimony and in her hearing exhibit, Davis may have falsely admitted that the newspaper articles in the hearing exhibit were not true

based upon the assumption that it would appear better to have lied to a news reporter than to the Presiding Judge.

Another basis to specify a misrepresentation and lack of candor issue is Davis' evasive and candorless testimony as to her income from BBS. See, Richardson Broadcast Group, 1584, para. 6. It took the Presiding Judge considerable time and effort to elicit from Davis this simple fact (Tr. 421-426). Davis had a readily apparent motive to attempt to conceal from the Presiding Judge her total compensation from BBS. The more she makes from BBS, the more unlikely it is that she will sell or dispose of this business in order to fulfill her integration pledge of full-time management of the Westerville station.

Accordingly, the Presiding Judge is requested to specify the following issue:

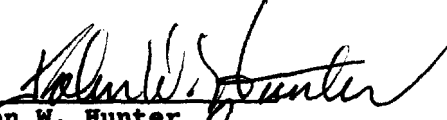
To determine whether Shellee F. Davis made knowing and intentional misrepresentations in her hearing exhibit and/or in her hearing testimony and whether she gave evasive and candorless testimony and, if so, whether she possesses the requisite character and basic qualifications to be a Commission licensee, and thus whether her application should be granted?

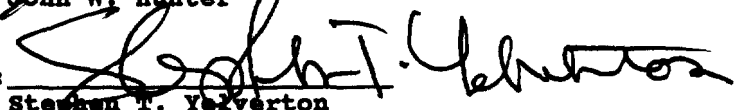
If this issue is specified, ORA requests that Davis produce representative documents showing the ownership of BBS from its founding to the present, including the officers and general managers. ORA also requests representative documents showing the total compensation which Davis has received from BBS from its founding to the present.

WHEREFORE, in view of the foregoing, ORA requests that the foregoing issue be specified against Davis.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 
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By: 
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September 15, 1993

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CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 15th day of September, 1993, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Motion to Enlarge Issues Against Davis" to the following:

The Honorable Walter C. Miller*
Administrative Law Judge
Federal Communications Commission
Room 213
2000 L Street, N.W.
Washington, D.C. 20554

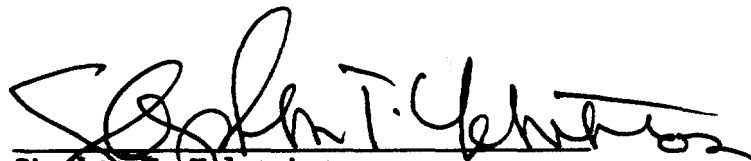
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Stephen T. Yelverton

*Hand Delivery